

# MALAYSIA FREEDOM OF INFORMATION (*FOI*) BILL

## BRIEFING NOTE



*“Information held by the government is a public good; the government is merely its custodian, bound to serve the people’s interest”*

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# Purpose

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This briefing note outlines key principles and design features for a national Freedom of Information (FOI) law for Malaysia. It draws from the Malaysian Civil Society Organisation (CSO) Model Right to Information (RTI) Bill and international standards on the right to information.

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# Introduction

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According to [RTI-rating.org](https://rti-rating.org), there are 142 FOI laws in existence as of May 2026. Despite moving to a knowledge-based economy and advancements in digital governance, Malaysia continues to regulate secrecy and information disclosure through a fragmented legal framework that lacks a comprehensive, systematic, and standardised approach to realising the public's right of access to government-held information.

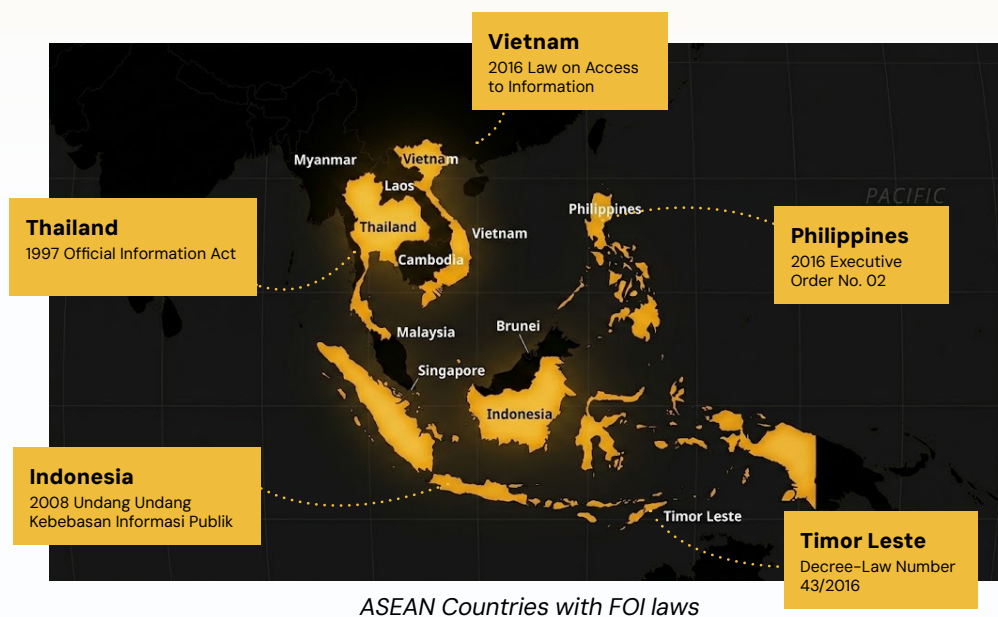
Access to information is a prerequisite for the realisation of fundamental rights and liberties, as it affects decision-making, freedom of speech, and freedom of expression. Freedom of Information (FOI) or Right to Information (RTI) is an internationally recognized legal framework that establishes not only the public's legal rights to government-held information (subject only to narrow and justified exceptions) but also standards for service delivery and arbitration procedures for such information.

A strong Malaysian FOI framework should be built on the following principles:

1. **Maximum disclosure** — information belongs to the public unless disclosure would cause demonstrable harm to the public interest.
2. **Limited and harm-based exemptions** — secrecy must be exceptional and justified, subject to a harm test and public interest override.
3. **Independent oversight** — decisions should be reviewable by an independent oversight body, such as an Information Commissioner.
4. **Proactive publication** — the public bodies should proactively publish key information without waiting for requests.
5. **Simple, low-cost access mechanisms** — requests should be easy and affordable .
6. **Protection and accountability** — safeguards for applicants, public officials acting in good faith, and whistleblowers.
7. **Alignment of laws** – harmonize all other laws to ensure they align with a robust FOI framework.

# Why Do We Need an FOI Law?

An FOI law serves as an important avenue for the public to obtain information from the government that affects their livelihood, while holding the government accountable for the performance of its public policies and bodies. Many countries in ASEAN and the broader Asia-Pacific have already implemented FOI laws or policies that demonstrate the government's willingness to be people-centric, transparent, and accountable.



While there are currently some official channels for government-held information, such as the Department of Statistics (DOSM) or the respective ministerial or agency websites, they are fragmented by practical and legal constraints, particularly the Official Secrets Act 1972 and Section 203A of the Penal Code.

An FOI law intends to create uniform access rules, enable appeals, and allow the oversight body and the judiciary to order disclosure, and reduce secrecy that enables corruption.

## a) FOI is a Right

At its heart, the right to information (RTI) is part of Article 19 of the Universal Declaration of Human Rights (UDHR) 1948. It is intrinsic to our constitutional right of speech and expression under Article 10(1)(a) of the Constitution.

Meaningful expression requires access to information held by government bodies/authorities. The logic is that the public would not be able to speak or express themselves without the right to seek, receive, and impart information necessary for public discourse and in participating in democratic governance.

## **b) Essential to Public Participation and Strengthening Democracy**

FOI and the right to information will serve as a gateway for members of the public, such as journalists, activists, academicians, businesses, lawyers, and even government agencies, to enhance their roles in fighting for the good of the people. FOI is also an avenue for regular Malaysians to interface with the government and ensure meaningful public participation, informed voting, and scrutiny of public institutions.

Thus, FOI enables informed policymaking, accountability, and market transparency across government, business, and civil society. At the same time, it provides structured, lawful access to information while protecting legitimate state interests through clear exemptions, oversight, and appeals.

## **c) Support anti-corruption and promote integrity and accountability**

Malaysia's 1MDB experience demonstrates that information disclosure is crucial in exposing corruption. FOI has demonstrable effects in revealing and deterring the misuse of public funds and resources, and in increasing public confidence in government due to new disclosures.

Malaysia's commitments under the United Nations Convention Against Corruption (UNCAC) and the UN Sustainable Development Goals (UN SDGs) (Indicator 16.10) underscore the relevance.

## **d) Transforming and future-proofing public administration**

Malaysia presently relies on sector-specific disclosure rules and state-level initiatives. A federal framework can establish consistent standards across ministries, agencies, statutory bodies, local authorities, and government-linked entities.

FOI laws will further improve records management, encourage digital governance, and reduce reliance on informal disclosure. This will foster public trust in government institutions.

# What Should Malaysia's FOI Law Cover?

The following outlines the proposed architecture and key elements for inclusion in Malaysia's FOI Bill.

## a) SCOPE: Who and What Should be Covered

FOI should be the public's right to access information held by public authorities or bodies.

### Scope

#### Coverage should extend to:

- Federal ministries
- Departments
- Statutory bodies
- Constitutional institutions
- Local authorities
- Government-linked entities, especially those that provide a public or social function
- Publicly funded institutions
- Contractors performing public function

#### Coverage should:

- apply to **all recorded information regardless of medium or classification label**.
- follow **public function and public funding**, not organisationorganisational form.

### Scope over the judiciary

There may be concern that FOI could interfere with the judiciary. However, FOI is usually designed not to threaten judicial deliberation or the attorney-client privilege.

Thus, the administration of the judiciary, as an extension of the government, should be within the scope of FOI. Certain judicial records should remain exempt from disclosure where necessary to protect judicial independence, deliberations and legal privilege.

## **b) Open by default and proactive disclosure**

### **Ownership of data**

FOI works on the fundamental premise that all information held by government bodies and public institutions is, in principle, public. It may be withheld or not disclosed only if there are legitimate grounds recognized under international law, such as national security, privacy, law enforcement, commercial and other confidentiality, public or individual safety, and the effectiveness and integrity of government decision-making processes.

### **Principle of maximum disclosure**

The principle of maximum disclosure establishes a presumption that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only in very limited circumstances.

### **Proactively publishing data/information**

FOI should not depend solely on requests.

The government should proactively publish all information on relevant sites and channels and ensure it is routinely updated and easily accessible. This would allow the public to access the information promptly.

#### **Every public body should publish:**

- Organisational structure
- Budgets and financial reports
- Procurement records and contracts
- Policies and plans
- Annual reports
- Requests and disclosure logs
- Contact details for Information Officers
- Public participation processes

#### **Publication should be:**

- Digital-first
- Machine-readable
- Accessible to persons with disabilities
- Periodically reviewed

## c) Clear Exemptions to Access

Legislators should think deeply about the balance between which types of information should be considered exempt and the public's rights, and allow the oversight body (see section E) to decide the details and the judiciary to interpret the public interest.

### Rule-based Exemption List

Government information, documents, and data should be considered **requestable or publishable unless explicitly stated** in the exemptions list.

Exemptions should be exhaustive and narrowly drafted.

### Reasonable Exceptions

**Permissible categories include:**

- National security and defence
- International relations and economic stability
- Law enforcement and public safety
- Commercial confidentiality
- Research integrity
- Personal data and privacy
- Legal professional privilege

The law should adopt a **three-part test**:

- i. Information falls within a listed exemption;
- ii. Disclosure creates a demonstrable risk of serious harm; and
- iii. Harm outweighs public interest in disclosure

### Public Interest override tests

A crucial element of an FOI law is the establishment of a public-interest test as a legal principle for an applicant seeking judicial review.

It should explicitly state which factors should favour the disclosure of any information, document, or data that was previously classified as secret. Such factors include:

- i. Promotion of open discussion/debate of public affairs;
- ii. Enhance government accountability;
- iii. Promote effective oversight of expenditure of public funds;
- iv. Contribute to the protection of the environment;
- v. Reveal threats to public health or safety;
- vi. Promote accountability for human rights violations;
- vii. Reveal the reasons for a government decision.

Finally, **irrelevant factors** that should not play a part in determining disclosure or secrecy:

- i. Disclosure may be 'misinterpreted', would "confuse" the public, or is too technical in nature;
- ii. Disclosure would set an unwelcome precedent;
- iii. Result in embarrassment or cause a loss of confidence of any public body;
- iv. Author of the information is, or was, of high seniority; or
- v. A threat to the position of a political party.

## c) Oversight Body for FOI

Malaysia should establish an independent Information Commission accountable to Parliament.

Recommended features:

- Independent legal status
- Transparent appointment process
- Fixed tenure
- Investigative powers
- Binding decision-making powers
- Power to compel disclosure
- Monitoring and reporting responsibilities
- Capacity-building and public education functions

**The Commission should operate independently of executive control and receive adequate funding to fulfil its mandate meaningfully.**

Regardless of its actual designation as a stand-alone or a branch of an existing statutory body (i.e., Ombudsman), it must be able to carry out the following functions:

|                                          |                                                                                                                                                                                                                               |
|------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>An appeals body</b>                   | It serves the first line of appeals. Only after an appeal fails at this stage should an applicant seek judicial review for more nuanced requests.                                                                             |
| <b>An administrative body</b>            | It coordinates training and the development of legal-technical proficiency among FOI officers; defends FOI officers; and improves the efficiency of the FOI administrative process to minimize bureaucratic burden and costs. |
| <b>A reporting body</b>                  | Gathers information and reports to legislative bodies on the performance of FOI across all government agencies;                                                                                                               |
| <b>A democratically accountable body</b> | It publishes information about the FOI process, conducts outreach and promotion, and can advise applicants on the application procedure.                                                                                      |

The position of such a body (information commissioners) should be filled by legally trained former civil service personnel, civil society representatives, or human rights experts to enshrine the rights of the public better.

## e) Protections for Information Officers and Sanctions:

### Protection from internal harassment

Department leaders and ground-level information officers need to be shielded from legal action over carrying out FOI in good faith. Steps must be taken to ensure that the implementation of the FOI law fosters a culture of openness and collaboration within the civil service, rather than a culture of secrecy for fear of embarrassment or legal repercussions.

### Punishments for improper or non-compliance

Government officers who deliberately impede, withhold, or improperly destroy requestable information should face sanctions to ensure that the most severe violations of accountability are disincentivized.

## f) Ease and Inclusivity of Access

There are very practical reasons that affect the utilization of the FOI mechanism. These small issues can create barriers to access to information.

|                                   |                                                                                                                                                                                                                                                                                            |
|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Time to respond</b>            | <p>A reasonable timeline, as suggested below, should be included in the law in responding to applications and appeals to make the access meaningful.</p> <p>Requests involving an imminent threat to life or liberty should be dealt with within 48 hours.</p>                             |
| <b>Fees &amp; Cost Structure</b>  | <p>FOI must be accessible to the public, and cost should never become a barrier to access. There should be no fees for applications or appeals. A reasonable reproduction cost may be charged.</p> <p>A fee waiver may be considered for low-income applicants.</p>                        |
| <b>Increasing Inclusivity</b>     | <p>The law should allow applications in multiple disclosure formats and in as many Malaysian working languages as possible, including accepting verbal requests from the non-literate public. Also consider that persons with disabilities require special accommodation and outreach.</p> |
| <b>Promotion</b>                  | <p>The Malaysian government should inform and educate the wider public about their right to request information under the law.</p>                                                                                                                                                         |
| <b>Key procedural protections</b> | <ul style="list-style-type: none"><li>• No need to explain reasons for the request</li><li>• Partial disclosure (redacted) where only portions are exempt</li></ul>                                                                                                                        |

## Request flowchart:

### STEP ONE

## Submit Request

Applicant submits request online, by email or in person

1

### STEP TWO

## Acknowledge Receipt

Public body acknowledges within 3 working days

2

### STEP THREE

## Initial Decision

Decision issued within 10 working days

3

### STEP FOUR

## Internal Review

If rejected, applicant may seek review within 30 days

4

### STEP FIVE

## Appeal to Information Commission

Independent review and binding decision

5

### STEP SIX

## Judicial Review

Court oversight

6

# The Need to Reform Legal Barriers

Alignment of laws is essential to ensure the new FOI/RTI regime is not undermined by existing secrecy, penal, or data protection laws. There is a need for harmonization, narrowing of exceptions, independent oversight, and robust protections for data protection, privacy, and whistleblowers, all grounded in international best practices.

## a) Repeal or Amend the Official Secrets Act (1972)

### Problems

- Grants broad executive powers to classify information as secret, with minimal safeguards and immunity from judicial review.
- Classification by category (e.g., Cabinet documents) removes accountability and is not subject to harm or public interest tests.
- Criminalizes both primary and secondary disclosures, with heavy penalties and reversed burden of proof.
- Ouster clause strips the judiciary of its constitutional power to oversee executive actions.

### Proposed reforms

**Option 1:** Repeal the Official Secrets Act and incorporate legitimate exemptions into the new FOI law.

**Option 2:** If OSA is to be retained, it should be substantially amended to guarantee alignment and be compatible with the new FOI law, including:

- Removing the presumption of secrecy by category;
- Limit and regulate executive classification powers, and require a harm test and a public interest override;
- Remove immunity from legal review for classification decisions and allow for right of appeal under the FOI framework.
- Set clear timelines for declassification and require periodic review of classified information.

These reforms are designed to balance national security with transparency, accountability, and public trust.

## b) Repeal Section 203A of the Penal Code

**Section 203A criminalizes the disclosure or possession of information or matter obtained through the performance of their duties punishable by a fine of up to RM1 million, imprisonment for up to one year, or both.**

### Problems

- Criminalizes disclosure of information obtained in official duties, fostering a culture of secrecy and complicating whistleblower protection.
- Rarely used and creates legal uncertainty.

### Proposed reforms

Repeal Section 203A to remove barriers to whistleblowing and clarify protections under the Whistleblower Protection Act (WPA), including statutory defence for public interest disclosures.

## c) Amending the Personal Data Protection Act (PDPA, 2010)

**Section 3 of the PDPA does not cover the federal and state governments.**

### Problems

- Does not apply to federal or state governments, leaving public sector collection, storage, and use of personal data unregulated.
- No mandatory notification for data breaches.

### Proposed reforms

- Remove government exemptions (section 3(1)) from the Act.
- Mandate breach notifications within 72 hours.

## d) Amending the Whistleblowers Protection Act (WPA, 2010)

### Problems

- No protection if disclosure is prohibited by other laws (e.g., OSA).
- Protection limited to disclosures to enforcement agencies only.
- Mandatory revocation of protection in certain cases, with no central oversight.

### Proposed reforms

- Remove conflicting provisos and insert a clause ensuring WPA prevails over secrecy laws.
- Introduce statutory defences and illustrative examples for public interest disclosures.

# Frequently Asked Questions (FAQ)

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## **1) The Parliament does not have the 'legal authority' to enact a freedom of information law**

**Reality:** Parliament in Malaysia has clear legal authority to enact a federal FOI law, as supported by the Federal Constitution and established legislative practice. Article 74 and the Ninth Schedule empower Parliament to legislate on federal matters, including public services, administration, and information management. Existing laws such as the Official Secrets Act 1972 and the Personal Data Protection Act 2010 demonstrate Parliament's competence in regulating access to information. Furthermore, a federal FOI law would reinforce constitutional rights under Article 10(1)(a), which, through judicial interpretation, includes the right to receive information as part of freedom of expression. Therefore, enacting an FOI law is both constitutionally valid and consistent with Malaysia's legal framework.

**\*\* Article 10(1)(a) guarantees freedom of speech and expression. A progressive and purposive constitutional interpretation would justify that meaningful expression requires access to information held by government bodies/authorities. The logic is that the public would not be able to speak or express themselves without the right to seek, receive, and impact information necessary for public discourse and in participating in democratic governance.**

## **2) "FOI will threaten national security and public order"**

**Reality:** FOI does not mean all information becomes public. Information that could genuinely affect national security, law enforcement, defence, or public order can still be protected by a justified exemption. FOI ensures that information is withheld only when there is a clear and legitimate reason, rather than by default.

## **3) "FOI will be costly, burdensome, and slow down government operations"**

**Reality:** Good record-keeping is already part of good governance. FOI helps ministries and agencies manage information more systematically, reducing confusion, duplication, and delays. Over time, this can improve government efficiency and public service delivery.

While there will be initial implementation costs in records management and training, international experience shows that proactive publication of frequently requested information reduces administrative burdens over time. In Malaysia, greater transparency can also reduce repeated parliamentary questions, media inquiries, and public complaints caused by a lack of accessible information.

#### **4) “The public will misuse FOI to attack the government”**

**Reality:** FOI is about helping people understand government decisions and how public funds are used. Requests that are repetitive, vexatious, or unreasonable can be managed through clear procedural safeguards. Ultimately, greater transparency can strengthen public trust in government institutions and demonstrate accountability, especially when misinformation and speculation are widespread.

#### **5) “In a multiracial and multireligious society, FOI will inflame sensitive issues involving race, religion, and royalty”**

**Reality:** Malaysia’s diversity requires careful handling of sensitive issues. FOI laws include safeguards to protect information that, if disclosed, could genuinely threaten public order or social harmony. At the same time, access to accurate information can help reduce rumours, misunderstandings, and unnecessary tensions. An independent appeals mechanism ensures that decisions to withhold information can be reviewed fairly and consistently.

#### **6) “FOI will expose sensitive commercial information”**

**Reality:** FOI does not require businesses to reveal trade secrets or commercially sensitive information. These protections remain in place under the exemption grounds. However, where public funds, government contracts, or allegations of wrongdoing are involved, there may be a strong public interest in disclosure.

#### **7) “FOI is unnecessary because Malaysia already has oversight bodies”**

**Reality:** Bodies such as the MACC, Auditor General, Public Accounts Committee, and parliamentary committees play important oversight roles. FOI complements their work by allowing the public to access information directly, without waiting for an investigation, audit, or parliamentary inquiry.

#### **8) “FOI will discourage open and robust internal discussions among the civil service”**

**Reality:** FOI is not intended to expose every discussion within government. Appropriate protections can be provided for sensitive policy deliberations. The aim is to strengthen transparency and public confidence while allowing the civil service to continue providing frank and professional advice.

**9) “Public bodies must have the right to protect themselves from being held liable for the disclosure of information”**

**Reality:** Robust legislation should include safeguards against retaliation and provide necessary protection to officers who disclose information in good faith. It should also include protections for applicants and whistleblowers, as well as anti-obstruction offenses and penalties for destroying or falsifying records. Intentional concealment or destruction of records should constitute an offense.

Adequate mechanisms that allow applicants to access internal review, independent appeal, and judicial review will provide another layer of safeguards.



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